

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-3260

UNITED STATES OF AMERICA

v.

HELACIO GONZALEZ-CASTILLO,
Appellant

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. No. 04-cr-00078)
District Judge: Honorable Yvette Kane

Submitted Under Third Circuit LAR 34.1(a)
November 14, 2005
Before: ROTH, FUENTES and BECKER, *Circuit Judges*

(Filed: December 5, 2005)

OPINION

BECKER, *Circuit Judge*.

Pursuant to a plea agreement, appellant Helacio Gonzalez-Castillo entered a plea

of guilty to a one-count indictment charging alleged entry into the United States as a previously deported alien. 8 U.S.C. § 1326(a). Gonzalez-Castillo was sentenced to 24 months' imprisonment.

Appellant challenges his sentence under *United States v. Booker*, 543 U.S. —, 125 S. Ct. 738 (2005). In *United States v. Davis*, 407 F.3d 162 (3d Cir. 2005) (*en banc*), we held that, except in limited circumstances, we will presume prejudice and direct a remand for resentencing where the District Court imposed a sentence in the belief that the applicable Sentencing Guidelines were mandatory. That was the situation here, and we perceive no circumstance in this case that warrants a different result from that found in *Davis*. We will therefore vacate the sentence and remand for resentencing in accordance with *Booker*.